



Bail & Pretrial Release: Summary of Recent Research on What Works

Approximately 61% of the individuals held in Texas county jails have not been convicted of any crime. They are being detained before trial, most often because they cannot afford the bond amount set in their cases, or even 10% of the bond amount to pay to a bail bondsman. In most counties, no risk assessment tool is used to determine the likelihood that each defendant will commit a new crime awaiting trial or fail to appear in court. Instead, judges often determine bond amounts based on bond schedules, where the category of the offense as well as defendant's criminal record determines the pre-set bond amount in each case.

A growing body of compelling research suggests that Texas' current monetary bond system may actually harm public safety. Low-risk, low-income defendants remain in jail for no other reason than they cannot afford bail, and detaining these individuals actually makes it more likely they will reoffend in the future. Meanwhile, higher-risk individuals with higher incomes can buy their release through cash and surety bonds. A research-based, validated risk assessment tool would allow counties to assign each defendant a risk level and make informed decisions about bond amount, pretrial release and pretrial supervision based upon the assigned risk level. This risk assessment tool used in combination with increased personal recognizance (PR) bonds would not only increase public safety but also save counties millions of dollars that are currently spent on jailing low-risk defendants.

The following is a summary of recent research into best practices around bond decisions and pretrial release.

A monetary bail system leads to detention based primarily on income level. Low-income defendants remain in jail before trial regardless of risk level, while higher income defendants who can afford bond go free.

- A study in Wichita County, Texas, by Texas A&M's Public Policy Research Institute (PPRI) showed that being indigent reduces a defendant's chance of bond by about 16%. Indigence was the primary determining factor in whether a defendant bonded out—NOT the seriousness of the current charge or criminal history.ⁱ
- Additionally, indigent defendants who were released from jail took longer to do so—nearly two times longer than other defendants.ⁱⁱ
- Another analysis of the New Jersey statewide jail population showed that nearly 40% of the total jail population were awaiting trial and detained solely because they could not afford bail. Twelve percent of all jail inmates were being held on a bond amount of \$2500 or less; 800 inmates were held on \$500 or less.ⁱⁱⁱ

Defendants who are detained pretrial have worse outcomes and receive lengthier sentences compared to otherwise identical defendants released on bond. This means the current system punishes the indigent more harshly solely because they are indigent and cannot afford their pretrial release.

- The same PPRI study compared Wichita County defendants who are otherwise statistically identical, except for whether they were released pretrial. They found that those who made bond had a:
 - 33% better chance of receiving deferred adjudication;
 - 30% better chance of having the charges against them dismissed;
 - 24% less chance of being found guilty; and
 - 54% fewer jail days sentenced.^{iv}
- Another study funded by the Houston-based Laura & John Arnold Foundation compared defendants in Kentucky and found that, compared to those released on bond, those who were detained pretrial were:
 - More than 4 times likely to be sentenced to jail;
 - More than 3 times likely to be sentenced to prison; and
 - Received significantly longer sentences—nearly 3 times as long for those sentenced to jail and more than twice as long for those sentenced to some prison.^v

Jailing low-risk defendants before trial has a negative impact on public safety, making it more likely they will commit a new crime in the short term and the long term.

- In another groundbreaking Arnold Foundation study of defendants in Kentucky jails, low-risk defendants held at least 2 to 3 days were almost 40% more likely to commit a new crime before trial than a low-risk defendant held no more than 24 hours.^{vi}
- The longer low-risk defendants were held, the more likely they were to reoffend. Those detained more than a month were 74% more likely to commit a new crime before trial than those released within 24 hours.^{vii}
- Long-term recidivism was also correlated with longer pretrial detention periods. Compared to low-risk defendants released within 24 hours of arrest, those detained 2 to 3 days were 17% more likely to commit a new crime within 2 years; those detained 1 to 2 weeks were 51% more likely.^{viii}
- One likely explanation for this is that longer pretrial detention makes it more likely low-risk defendants will lose their employment, lose their housing, and encounter family disruptions and other obstacles as a result of their jail stay, thus increasing the likelihood of future criminal activity.

Court appearance rates improve by releasing low-risk defendants quickly and providing effective pretrial supervision for moderate- and high-risk defendants.

- Low-risk defendants held 2 to 3 days were 22% more likely to fail to appear than similar defendants held for less than 24 hours. Low-risk defendants held 15 to 30 days were 41% less likely to appear.^{ix}
- Moderate- and high-risk defendants who received pretrial supervision were significantly more likely to appear for court appearances than those who were unsupervised, according to a third Arnold Foundation study of defendants in two states. Moderate risk defendants missed court 38% less frequently with supervision, and high-risk defendants missed court appearances 33% less frequently.^x

Surety bonds and bail bondsmen do not reduce the risk of defendants committing a new crime, nor do they improve court appearance rates or rate of fugitive return compared to unsecured bonds.

- A 2013 study of nearly 2,000 Colorado defendants compared those released on unsecured bonds (PR bonds where defendant promises to pay only if he fails to appear) and secured bonds (cash bonds and surety bonds posted by a bail bondsman). The researchers found no statistically significant difference in the rate of rearrest for new crimes before trial between defendants of the same risk level released on different types of bonds. For example, 93% of low-risk defendants released on unsecured bond were not charged with a new crime; 90% of defendants released on secured bond were not charged with a new crime.^{xi}
- There were no statistically significant differences in the court appearance rates of defendants of the same risk level released on unsecured bonds versus secured bonds. For example, 97% of low-risk defendants on unsecured bond appeared in court; 93% of low-risk defendants on secured bond appeared in court.^{xii}
- Finally, there was no difference in the rate of fugitive return between unsecured and secured bonds, undermining bondsmen claims that they successfully located and returned fugitives to court at a greater rate.^{xiii}

Jurisdictions have successfully moved away from monetary bond without suffering decreased court appearances rates or pretrial rearrest rates.

- Kentucky overhauled its pretrial release laws with the passage of legislation in 2011 that created a presumption for non-financial release of low- and moderate-risk defendants, with financial bond only if a judge documents defendant is a flight risk or danger to the community. The bill also incorporated the use of a research-based, validated pretrial risk assessment tool statewide. In the first year, non-financial release increased from 50% to 66% of all defendants. The release rate of low-risk defendants jumped from 76% to 85%, and the statewide pretrial jail population

decreased by 279 people. Court appearance rates and public safety rates remained steady, despite the higher release rates.^{xiv}

- In Washington, DC, 80% of all defendants are released on a PR bond before trial. The remaining 20% are either held without bond because they are determined too high of a risk to release (15%) or released on cash bond after a determination that they have sufficient income to make bond (5%).^{xv} With an effective pretrial services agency making accurate risk assessments and supervising defendants on release, those released before trial have an 89% court appearance rate. Similarly, 89% are not rearrested for a new crime before trial.^{xvi}

For further information, contact:
Mary Mergler, Texas Appleseed
mmergler@texasappleseed.net
(512) 473-2800 x106

ⁱ Public Policy Research Institute, Texas A&M University, Wichita County Public Defender Office: An Evaluation of Case Processing, Client Outcomes and Costs 54-59 (2012) [hereinafter PPRI Wichita County].

ⁱⁱ *Id.*

ⁱⁱⁱ Marie VanNostrand, Luminosity, New Jersey Jail Population Analysis: Identifying Opportunities to Safely and Responsibly Reduce the Jail Population (2013).

^{iv} PPRI Wichita County 54.

^v Christopher T. Lowenkamp et al., Laura & John Arnold Foundation, Investigating the Impact of Pretrial Detention on Sentencing Outcomes 10-11 (2013).

^{vi} Christopher T. Lowenkamp et al., Laura & John Arnold Foundation, Hidden Costs of Pretrial Detention 10-11 (2013).

^{vii} *Id.*

^{viii} *Id.* at 19-20.

^{ix} *Id.* at 10-11.

^x Christopher T. Lowenkamp & Marie VanNostrand, Exploring the Impact of Supervision on Pretrial Outcomes 4 (2014).

^{xi} Michael R. Jones, Unsecured Bonds: The As Effective and Most Efficient Pretrial Release Option, Pretrial Justice Institute (2013).

^{xii} *Id.*

^{xiii} *Id.*

^{xiv} Pretrial Services, Administrative Office of the Courts, Kentucky Court of Justice, Pretrial Reform in Kentucky (2013).

^{xv} Pretrial Justice Institute, The D.C. Pretrial Services Agency: Lessons from Five Decades of Innovation and Growth, Case Studies: An E-Publication of the Pretrial Justice Institute, Vol. 2, No. 1.

^{xvi} Pretrial Services Agency for the District of Columbia, Performance Measures, *available at* https://www.psa.gov/?q=data/performance_measures.